The Libertarian Party of Connecticut

Defending Liberty and Principle Since 1975

RE: HB5433/SB352

To the Labor and Public Employees Committee:

I am providing this statement to the committee in my capacity as Chair of the Libertarian Party of Connecticut against "S.B. No. 352 (RAISED) AN ACT CREATING A PROCESS FOR FAMILY CHILD CARE PROVIDERS TO COLLECTIVELY BARGAIN WITH THE STATE" and "H.B. No. 5433 (RAISED) AN ACT CREATING A PROCEDURE FOR PERSONAL CARE ATTENDANTS TO COLLECTIVELY BARGAIN WITH THE STATE" as follows. These bills ought to be opposed for the following reasons:

I. These bills ratify a usurpation of legislative power

As you may know, the Personal Care Attendant Quality Home Care Workforce Council was created by Executive Order of Governor Dannel Malloy in September 2011. It is, in effect, a new agency not created by any act of the General Assembly. Nowhere in the General Statutes is the Governor authorized to create a new agency. Currently, the Governor has created this agency, set it in motion, and effectively dared the legislature not to pass these bills lest the fallout and wasted effort be the fault of the legislature.

The General Assembly would only encourage similar reckless disregard in the future. These bills should be defeated even if they had merit and immediate necessity for that very reason.

II. These bills create an unknown class of state employees

SB 352 Section 1 (7) provides "A family child care provider shall not be considered a state employee and shall be exempt from any and all provisions of the general statutes creating rights, obligations, privileges or immunities to state employees as a result of or incident to their state service.", yet this bill and its companion invoke numerous provisions and processes in Chapter 68 of the General Statutes, which relate to the collective bargaining of state employees.

In considering these bills, the legislature will need to ask itself numerous questions on exactly what status these employees will have, such as:

1) How does Connecticut General Statutes Section 1-84 (relating to prohibited activities under the Code of Ethics) apply?

2) On passage of these bills, would personal home care workers be considered "classified" or "unclassified" employees for the purposes of Connecticut General Statutes Section 5-196?

3) How does Connecticut General Statutes Section 5-200c (relating to wage inequalities) operate in relation to these bills upon passage?

4) Do these bills allow personal care workers to appeal to the Employees' Review Board as created by Connecticut General Statutes 5-201?

In asking these questions, there are a host of potential outcomes that range between two extremes. The first extreme is that we effectively add thousands of new employees to the State payroll after one or more court challenges. The second extreme is that both bills are deemed void and of no effect. You can have all sorts of outcomes in between which may or may not confer some degree of entitlement to benefits, reimbursements, tenure, ect.

III. These bills violate the privacy of personal care workers and actively promote incompetent collective bargaining

Section 2 (e)(1) and (2) provide that a list is to be compiled of all personal home care workers. It also makes the list a "public record" pursuant to Connecticut General Statutes Section 1-200, a section of the law you may recognize at the Freedom of Information Act. Subsection (2) then provides that any "employee organization" defined by Connecticut General Statutes 5-270 prospectively interested in representing personal care workers may acquire that list merely for the asking. Just so the committee is aware, "Employee organization", as defined by Connecticut General Statutes 5-270, "means any lawful association, labor organization, federation or council having as a primary purpose the improvement of wages, hours and other conditions of employment among state employees."

Also, so the legislature is aware, unions have adopted the practice of regularly shopping around for new members that don't necessarily represent the

original trade or profession they were founded to. So if the teacher's union (which currently represents nurses) wants a cut of the new dues (see IV. These bills create an unlawful taking of dues), no actual knowledge of personal care assistant standards or industry practices is required. Just the same, nothing exists in either bill (if passed) or the General Statutes to stop the pipefitter's union at Electric Boat, the Service Employees International Union, the Teamsters or just plan anyone without any clue about what personal care workers do from representing them. When a simple majority of personal care workers votes to accept that representation, everyone else is forced along.

This isn't to say that unions haven't ever served a very important function. In fact, unions were in the textile and ship building industries when workplace deaths and injuries were common due to reckless disregard for workplace safety and what the industry or trade did in general. If I were in a union, I'd find both SB 552 and HB 5433 insulting for that very reason. And today, it's not uncommon for employers themselves to offer better pay than what a disinterested union that was founded to represent a different profession would ask for.

IV. These bills create an unlawful taking of dues

Section 2(3) of SB 352 provides that, "A contract or award reached pursuant to this section may include provisions calling for the state or its fiscal intermediary to deduct from reimbursement payments regular dues and initiation fees, and nonmember service fees limited to the lesser of regular dues, fees, and

assessments that a member is charged or the proportionate share of expenses incident to collective bargaining;"

Effectively, every personal care worker making $10 or $12 per hour has a new expense imposed upon them, one they may or may not have asked for and definitely have no say in.

V. These bills are moot, vague and nonsensical

Section 3 (1) of HB 5433 provides that, "(1) The following shall be prohibited subjects of bargaining: (A) Application of state employee benefits to personal care attendants, including, but not limited to, health benefits and pensions, (B) a consumer or surrogate's right to hire, refuse to hire, supervise, direct the activities of, or terminate the employment of any personal care attendant, (C) any proposal that would prevent surrogates from hiring personal care attendants not identified on the list described in subsection (e) of this section, and (D) a procedure for grievance arbitration against a consumer or surrogate; "

Section 3 (5) of the House Bill also provides that, "(5) In any proceeding which may be filed under section 5-272 of the general statutes, the State Board of Labor Relations shall be without jurisdiction over, or authority to issue any remedy against, any consumer or surrogate;"

Both bills effectively tell us that no traditional subject of actual bargaining that unions are supposed to be engaged in will ever touch any of the traditional things unions typically are expected to bargain for.

VI. Conclusion

The committee should reject both bills out of hand if only for the fact that they validate executive usurpation of its authority. The bills themselves create a previously unknown class of state employees, a class that could potentially create millions of dollars in state liability and legal expenses. These bills overtly violate the privacy of homecare workers while concurrently ensuring that every union not qualified or professionally knowledgeable enough to represent personal care workers has the opportunity to do so. This is more about union dues, and that's especially evidence because the language of the bills themselves makes anything a union would typically negotiate for off limits.

Myself and the Libertarian Party of Connecticut oppose this bill.

In Liberty,

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